

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARK J. WHALING.

Petitioner

Vs.

Robert D. Shannon.
Warden

10-135

Civil No.

Judge.

FILED
SCRANTON

APR 10 2010

PER [Signature]
DEPUTY CLERK

HABEAS CORPUS
§ 2254

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

1. The name and address of your present place of confinement:

Mark J. Whaling # FW 9846 SCI-Frackville
111 Altmont Blvd, Frackville, PA 17931

2. Are you presently in custody pursuant to the conviction(s) or sentence that you seek to challenge here?

Yes X No

3. With regard to the conviction(s) or sentence you are attacking state:

- a. The name, address, and parish of the court entering the judgment of conviction:

Commonwealth of Pennsylvania, Erie County
Case # CP-25-0571-2003

- b. The date of judgment of conviction: November 5, 2003

- c. The length of your sentence: 7 1/2 to 27 years

- d. The nature of each offense you were convicted of: PWED (Poss w/ Intent to
Deliver) - Cocaine and Criminal Conspiracy

- e. Whether you were convicted of each offense following a plea of:

i. Not guilty ✓

ii. Guilty

iii. Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: N/A

- f. If you pleaded not guilty, what kind of trial did you have? (check one)

i. Jury X

ii. Judge only

g. Did you testify at trial?

Yes ___ No X

4. **Statute of Limitations**

28 U.S.C. § 2244(d) establishes a 1 year statute of limitations for an application for a writ of habeas corpus. Is this application barred by this 1-year period of limitation? YES ___ NO X

If not, state why not?

pendency of State Appeals and
Post Conviction Remedies and further Appeals
Tailed the limitation period

5. **Grounds for Present Petition**

State concisely each and every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. You may attach pages stating additional grounds and facts supporting same.

WARNING: Absent exceptional circumstances, if you fail to set forth all grounds in this petition, you will be barred from presenting additional grounds at a later date. See 28 U.S.C. § 2244.

- a. Ground one: 6TH AMENDMENT - Violation of the
Right to Confront witnesses - Hearsay
Crawford v. Washington

Supporting FACTS (state briefly without citing cases or law) Police witness
introduced prejudicial hearsay ~~to bolster~~ of
a non-testifying witness to bolster co-defendant
testimony as to identification - Moreover
Such hearsay proves that police made willfull
and intentional fabrication and false statements
in search warrant application

- b. Ground two: 4TH AMENDMENT - Illegal Seizure/ Detention
of the person without a lawful warrant
or probable cause.

Supporting FACTS (state briefly without citing cases or law) petitioner was
seized by police outside a residence where
a warrant was being executed, he was
searched, (found to have "NO" contraband) was
handcuffed and detained - then arrested
even though he was not named in the warrant and
was not an resident² of the home. 2 other
females with petitioner also had no contraband
but they were released after scene was
secured, yet petitioner was forced to remain
for hours and taken to jail after drugs were found in home
and out side of home

- c. Ground three: 4TH AMENDMENT - Illegal Search
Warrant allowing all persons present
Search authority

Supporting FACTS (state briefly without citing cases or law) Police deliberately
falsified search warrant affidavit by
withholding material information in order
to obtain an "All Persons Warrant" where
police knew the legal names of suspects
(admitted at trial) but claimed not to
know in warrant affidavit.

- d. Ground four: 6TH and 14TH AMENDMENT - Ineffective
Assistance of Counsel at trial and
on Appeal

Supporting FACTS (state briefly without citing cases or law) The gross ineffective
representation and advocacy of petitioner's
numerous attorney's amounted to to
representation at all where his attorney's
refused to present the above constitutional
claims in state court, resulting in petitioner
having to present said claims Pro-se.

6. Direct Appeals

- a. Did you file a direct appeal from your judgment of conviction or sentence?

Yes ☒ No ☐

- b. If you did file a direct appeal, for you initial appeal, answer the following:

- i. The name and address of the court where you first appealed:

PA Superior Court - Pittsburgh (Western Dist)

- ii. The result of this appeal.

Affirmed Sentence

- iii. The date of the decision.

- iv. The citation and/or docket number of the decision (if known). 2195 WDA 2003

- v. The grounds raised in your present habeas petition that were raised in this direct appeal.
Ground #1 - Confrontation Clause.
- c. If you sought review of your appeal by a higher court, answer the following:
- i. The name and address of the court where you next applied for review:
N/A
- ii. The result of this appeal.
N/A
- iii. The date of the decision. N/A
- iv. The citation and/or docket number of the decision (if known).
N/A
- v. The grounds raised in your present habeas petition that were raised in this earlier application for review:
N/A
- d. If you filed a petition for certiorari in the U.S. Supreme Court, please answer the following with respect to each such petition:
- i. The result. N/A
- ii. The date of the result. N/A
- iii. The citation and/or docket number (if known).
N/A
- iv. The grounds raised in your present habeas petition that were raised in this earlier appeal.
N/A

7. **Post-Conviction or other Collateral Review**

- a. Other than the direct appeals described above, have you previously filed any petitions, applications, or motions with respect to your judgment of conviction or sentence in the state court?
- Yes ☒ No ☐

b. If so, give the following information with regard to the first petition, application, or motion you filed:

i. The name and address of the court. Eric Canty Court of
Common Pleas

ii. The nature of the proceeding. P.C.R.A.

iii. The date it was filed. August 29, 2005

iv. The grounds raised in your present habeas petition that were raised.

All claims have been exhausted
fully by Pro-se Appeal Brief filed on
December 18 2007 in #1528-WDA-2007

v. Did you receive an evidentiary hearing? Yes ☒ No ☐

vi. The result. Sentencing claim granted sentence
reduced * Court did not address Constitutional

vii. Did you appeal or file an application for review to higher state courts having jurisdiction? Yes ☒ No ☐

viii. If not, briefly explain why you did not. N/A

ix. If so, name the court(s) to which you applied, the date of the final result in each court, and the result in each court: PA Superior Court - Affirmed

See #1528 WDA-2007 Comm v. Whelton

PA Supreme Court # 279 WAL 2009

claims
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c. If you filed a second petition, application, or motion, give the following information with regard to that filing:

i. The name and address of the court. N/A

ii. The nature of the proceeding. N/A

iii. The date it was filed. N/A

iv. The grounds raised in your present habeas petition that were raised.

N/A

- N/A
- v. Did you receive an evidentiary hearing? Yes _____ No X
- vi. The result. N/A
- vii. Did you appeal or file an application for review to higher state courts having jurisdiction? Yes _____ No _____
- viii. If not, briefly explain why you did not. N/A
- ix. If so, name the court(s) to which you applied, the date of the final result in each court, and the result in each court: N/A

8. Exhaustion of State Remedies

Generally, any ground that you seek to present here must have first been presented to the state courts. See 28 U.S.C. § 2254(b). Attach copies of previous petitions, applications, or motions filed with the state courts where you presented each of the grounds listed in Part 5. If any of the grounds listed in Part 5 above have not been previously presented to the highest state court that has the power to consider it, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Petitioner filed Pre-sc Appeal raising all claims in current Habeas, PCRA and Appellate Counsel refused to present claims, Appellate court remanded for appointment of counsel who then refused to file claims

9. Prior Federal Habeas Petitions

- a. Have you filed any other petition in any federal court where you sought to attack the same conviction(s) or sentence you are challenging here? Yes _____ No X
- b. If so, give the following information:
- i. The name and address of the court where it was filed. N/A
- ii. The docket number. N/A
- iii. The grounds raised. N/A

N/A

10. Other Pending Actions

a. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment you are attempting to attack here? Yes _____ No X

b. If so, please give the following information:

i. The name and address of the court. N/A

ii. The docket number of the action. N/A

iii. The nature of the proceeding. N/A

11. Attorneys Representing Petitioner

Give the name and address of each attorney who represented you in the following stages of the judgment attacked herein:

a. At the preliminary hearing. Gene Placidi

b. At the arraignment and plea. Same

c. At trial. Same

d. At sentencing. Same

e. On appeal. Same

f. In any post-conviction proceeding. William Hathaway, Jack Grayer, Bruce Sandmeyer, Allen J. Adams, Garrett Taylor

g. On appeal from any adverse ruling in a post-conviction proceeding. Garrett Taylor
2525 W 26TH ST, ERIC, PA 16506

⑤ Attorneys

12. Other Sentences

a. Where you sentenced for more than one offense in the same court and at the same time?

Yes ✓ No _____

b. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No ✓

- i. If so, give the name and location of the court which imposed the sentence to be served in the future. N/A
- ii. Give the date and length of the said sentence. N/A
- iii. Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes _____ No X

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on X 4-5-10.
(date)


X Mark J. Whaling
Signature of Petitioner
PRO-SE

JUDICIAL NOTICE

Petitioner intends to file motion for leave to file an Amended Habeas Petition and Supporting Memorandum upon obtaining assistance of Paralegal who assisted in preparing petitioners Pro-se State PCRA pleadings or other legal counsel as petitioner has been approved for transfer "West" closer to home and closer to legal assistance. Petitioner is being held in AC status since early February awaiting approved transfer.

Mark J. Whaling
FW- 9846
1111 Altamont Blvd.
Scranton Pa.
17931

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RECEIVED
SCRANTON
APR 07 2010
PER 
DEPUTY CLERK



MARY E. D'ANNUNZIO
CLERK OF COURT

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